of criminal prosecution in a court of law. The suggestion was that the decision not to proceed against him in a court of law was evidence of bad faith. I am not aware of any principle or authority which supports this view. At any rate I do not think the argument is sound. I would reject it. In the absence of anything else it cannot be said that the appellant has proved bad faith.

Lastly, there is also the appellant's affidavit in which he categorically denies each and every one of the allegations of fact and contends in each case that even if the allegation is true, it cannot constitute a threat to the past or future security of Malaysia. In this connection, I shall be content to say that in *habeas corpus* proceedings, such as this, the court is not concerned with the truthfulness or otherwise of the allegations because the question whether it is necessary that a person be detained under section 8(1)(a) of the Internal Security Act, 1960 is a matter for the personal or subjective satisfaction of the executive authority. Accordingly, no consideration can be given to the appellant's denial and no opinion need be expressed on his contentions.

I agree that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Ranjit, Thomas & Kula.*

LIM CHIN POH v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) May 23, 1969]

[Singapore — Magistrate's Appeal No. 203 of 1969]

Road Traffic — Charge of driving at a speed and in a manner which was dangerous to the public — Onus on prosecution — Failure to prove ingredients of charge — Road Traffic Ordinance, 1961, s. 26(1) — Charge altered to causing death by negligent act — Penal Code, s. 304A.

Penal Code, s. 304A — Causing death by negligent act.

Criminal Law and Procedure — Trial — Interruptions by trial judge — Whether trial irregular.

The appellant was convicted on charge of driving at a speed and in a manner which was dangerous to the public an offence punishable under section 26(1) of the Road Traffic Ordinance, 1961 and was sentenced to one year's imprisonment. Counsel for the appellant criticised the manner in which the learned district judge conducted the trial of the appellant. His complaint was that by reason of the frequency and nature of the interruptions by the learned trial judge when the appellant was giving evidence, the appellant did not have a fair trial. It was alleged that the trial judge intervened on no less than fifteen occasions; that he cross-examined the appellant; that he made it known he was displeased with the appellant; and that he was so thoroughly annoyed with the appellant that he gave vent to his feelings by imposing a severe sentence. On appeal,

Held: (1) the evidence did not support a conviction under section 26(1) of the Road Traffic Ordinance, 1961, and the conviction should be altered to one under section 304A of the Penal Code. Sentence to a fine of $1,000 or six months imprisonment substituted;

(2) it is desirable that the district judges and magistrates should bear in mind that the first and most important thing for the administration of the criminal law is that it should appear that the accused is having a fair trial and that he should not be left with any sense of injustice and certainly not on the ground that the trial judge was prejudiced against him. Where the prosecution and the defence are both represented by counsel, as they were in this case, the trial judge should refrain from intervening unless it is absolutely necessary.

Per Curiam: The expression "driving in a manner which is dangerous to the public" indicates some dangerous act or manoeuvre on the part of the driver of a vehicle, e.g. overtaking a vehicle on the wrong side of it, or overtaking in the face of oncoming traffic, or overtaking when unable to see oncoming traffic, or crossing a junction against traffic light, and so on. There must be some positive act on the part of the driver which is dangerous having regard to all the circumstances.

Case referred to:—

(1) *R.* v. *Evans* (1962), 47 Cr. App.R. 62; [1963] 1 Q.B. 412; [1962] 3 W.L.R. 1451; [1962] 3 All E.R. 1086.

MAGISTRATE'S APPEAL.

R.E. Redrup for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the Public Prosecutor.

Choor Singh J.: The appellant Lim Chin Poh was convicted by a district court of an offence under section 26(1) of the Road Traffic Ordinance, 1961 and sentenced to one year's imprisonment. He now appeals against his conviction and sentence.

Section 26(1) of the Ordinance reads as follows:—

"Any person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of an offence under this Ordinance and shall be liable on conviction to imprisonment for a term not exceeding five years."

In my view there are three distinct offences under this section because the use of the word "or" is disjunctive:—

(1) causing death by driving a motor vehicle on the road recklessly;

(2) causing death by driving a motor vehicle on the road at a speed which is dangerous to the public etc.; and

(3) causing death by driving a motor vehicle on the road in a manner which is dangerous to the public, etc.

In the present case the appellant was charged as follows:—

"You, Lim Chin Poh (NRIC No. 0981084) are charged that you, on or about the 3rd day of June, 1967 at about 12 o'clock noon, at the 14¼ m.s. Woodlands Road, Singapore, caused the death of one Lee San, by driving motor bus SH. 550 at a speed and in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which was actually at the time or which might reasonably be expected to be on the said road, to wit, by driving the said motor bus in the direction of Johore at a speed and in a manner that you were not able to exercise proper control of it so that whilst attempting to overtake a stationary lorry No. C. 5844 which was parked on the left edge of the said road, you collided into the rear offside of the said lorry causing it to lurch forward into the deceased who was then refuelling the said lorry and under such circumstances caused his death, and thereby you have committed an offence punishable under section 26(1) of the Road Traffic Ordinance, 1961 (No. 26 of 1961)."

It would appear from the charge that the appellant was charged with elements (2) and (3) abovementioned, the prosecution case being that he was driving at a speed which was dangerous *and* in a manner which was dangerous. Although there is no objection in law to a person being charged under section 26(1) of the Road Traffic Ordinance with driving at a speed and in a manner dangerous to the public, the prosecution must appreciate that by framing a charge in that manner they are taking upon themselves the onus of proving two separate and distinct elements, a speed dangerous to the public and a manner of driving dangerous to the public. In this case the prosecution had to prove both elements of the charge and if they failed to establish either the dangerous speed or the danger to the public, the appellant would be entitled to be acquitted.

The undisputed facts are these. On the day in question the appellant was driving a bus belonging to the Green Bus Company along Woodlands Road and proceeding in the direction of Johre Bahru. When he arrived at the 14¼ m.s. he saw a stationary timber lorry parked on the left hand side of the road. In passing this lorry, the front nearside of the bus hit the rear offside of the stationary lorry. Unknown to the appellant the driver of the stationary lorry was standing on the road side and pouring petrol from a can into the lorry's petrol tank which was on the nearside of the lorry behind the driver's cabin. The impact of the bus hitting the lorry caused the driver of the lorry to fall on the road where he was run over by a wheel of the lorry. He died on the spot.

The only eye-witness who gave evidence for the prosecution was the lorry attendant named Ong Ah Tat. His evidence was as follows. His lorry ran out of petrol before they could reach a petrol station and the driver pulled up at the edge of the road just by the grass verge. There was a spare can of petrol in the lorry and the driver proceeded to pour the petrol into the lorry's petrol tank on the nearside of the lorry. While the driver was doing this he (the attendant) guided the traffic by waving to them to pass along. Traffic was light and the road surface was dry. Visibility was very good. He saw a bus coming from the direction of the city. He first saw it when it was 400 to 500 feet away. It was travelling very fast. He waved to the bus to pass on. At that stage there was no other vehicle on the road. For no rhyme or reason the bus came and collided with the rear part of his lorry. The impact pushed his lorry five or six feet forward and after the impact he saw that the driver of the lorry was lying on the road. He went up to him and saw that he was bleeding from his head. He ran to the Caltex petrol station for help. In cross-examination he stated that in his estimation the speed of the bus was 40 to 50 miles an hour. He did not hear any screeching of brakes. He did not notice the bus slowing down.

On the above evidence the learned district judge who tried him, held that a case had been made out which if unrebutted would warrant the conviction of the appellant on the charge he faced and accordingly he called upon the appellant to enter upon his defence. It is unnecessary to consider whether on the evidence before him the learned district judge was justified in calling upon the appellant to enter upon his defence.

As stated earlier, the two elements in the charge were driving at a dangerous speed and driving in a manner dangerous to the public. The only evidence of speed was the word of the lorry attendant who was clearly an interested party. Quite apart from being the attendant of the lorry, he admitted that he was also a nephew of the deceased lorry driver. There was no evidence whether or not he could drive a motor vehicle and whether he was capable of estimating speed in terms of miles per hour. Even if his estimate of the speed was correct, namely, 40 to 50 miles per hour, I do not consider such speed was dangerous at the time and place of the accident. The accident occurred at the 14¼ m.s. Woodlands Road. There is one-way traffic there. There was no other traffic on the road. The accident occurred at 12 noon in broad day light. I see nothing wrong in a bus travelling at 40 m.p.h. in broad day light, on an empty road at the 14¼ m.s. Woodlands Road. In my opinion the prosecution failed to prove that the bus was being driven "at a speed dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of

the road, and the amount of traffic which was actually at the time or which might reasonably be expected to be on the road."

I now come to the second element in the charge, the manner of driving, which was alleged to be dangerous. It was alleged in the charge that the appellant was driving his bus "in a manner that you were not able to exercise proper control of it so that while attempting to overtake a stationary lorry which was parked on the left edge of the said road, you collided into the rear offside of the said lorry causing it to lurch forward into the deceased who was then refuelling the said lorry." There was no evidence at all to support the assertion that the appellant was not able to exercise proper control of his bus. The lorry attendant never mentioned anything about the appellant losing control of the bus or of not being able to exercise proper control of his bus. His evidence was that he did not know why the bus struck his lorry. It does not follow that because the bus hit the lorry, therefore the bus driver must have lost control of his bus or was not able to exercise proper control of his bus. The cause of the accident may have been something else. It may well be that the appellant did not keep a proper look out and did not see the lorry until it was too late or that there was an error of judgment on his part in that he overtook the bus too close to it and did not allow sufficient clearance. Whatever the cause of the accident, there was in my opinion no evidence to support the prosecution's assertion that the appellant drove in a manner dangerous to the public. In my opinion the expression "driving in a manner which is dangerous to the public" indicates some dangerous act or manoeuvre on the part of the driver of a vehicle, e.g. overtaking a vehicle on the wrong side of it, or overtaking in the face of oncoming traffic, or overtaking when unable to see oncoming traffic, or crossing a junction against traffic light, and so on. There must be some positive act on the part of the driver which is dangerous having regard to all the circumstances.

Counsel for the respondent cited *R.* v. *Evans* [1] and relied on the following passage from the judgment of the Court of Criminal Appeal, at p. 65:—

> "And it is quite clear from the reported cases that, if a man in fact adopts a manner of driving which the jury think was dangerous to other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless, momentarily inattentive or even doing his incompetent best."

Counsel submitted that even if the appellant was merely careless, then, on the authority of the decision in *Evans'* case, the appellant was rightly convicted.

In *Evans'* case, the appellant Evans, a medical practitioner and a very experienced driver with a very long and good record behind him, was driving his Jaguar motor-car along a straight open road. The road was only just over 20 feet wide, so that there clearly would not be room for three vehicles abreast. Ahead of him was a motor-car travelling at about 40 miles an hour. He decided to overtake. In the act of overtaking, he increased his speed to some 60 miles an hour and was driving on his wrong side of the road when he crashed head-on into a motor-car coming from the opposite direction and of whose approach he appeared to have been totally unaware. The driver of the other car was killed. The reason why Dr. Evans did not see that approaching vehicle appeared to be that there was a dip in the road ahead of him and at the vital moment when he was deciding to overtake, and commencing to overtake, the approaching vehicle was hidden in this dip, but he knew that the dip was there and he was apparently taking a chance. The question, therefore, in that case, was, viewed objectively, did the course on which and the speed at which Dr. Evans drove his car in the particular circumstances prevailing at the time involve danger to another road user? The answer to that question was obviously yes and Dr. Evans was therefore rightly convicted and his appeal against his conviction was dismissed by the Court of Criminal Appeal. The passage cited by counsel for the appellant must be understood in the light of the facts of that case. The operative words in that passage are "adopts a manner of driving which the jury think was dangerous" and as stated earlier there must be proved some act or manoeuvre on the part of the accused which could be considered dangerous. Careless driving may well be dangerous though all careless driving are not necessarily dangerous. This court is not going to attempt to lay down what is or is not dangerous driving. The question in these cases always is: "Did the conduct of the accused amount to dangerous driving?" And to answer this question the court must consider whether or not the act or manoeuvre of the accused, viewed objectively, involved danger to other road users in the prevailing circumstances? In the present case, the overtaking of the stationary lorry by the appellant, an experienced bus driver, at 40 m.p.h. on an empty road, cannot be said to involve danger to other road users. In my opinion there is no evidence in this case to support a charge of "causing death by driving in a manner which was dangerous to the public." The question is, what offence did the appellant commit? In my opinion, the evidence for the prosecution made out a *prima facie* case of negligent driving and at the close of the prosecution case the learned district judge should have amended the charge

of one of causing death by a negligent act, an offence punishable under section 304A of the Penal Code and should have called the defence of the appellant on this amended charge.

The appellant's version of the accident was that just as he was about to overtake the stationary lorry, another lorry came from behind him at very great speed sounding its horn furiously in an endeavour to overtake his bus. Consequently he swerved to his nearside to allow this lorry to pass. When this other lorry passed him he swerved back to his offside in order to pass the stationary lorry but failed to clear it. The front nearside of his bus hit the stationary lorry. The learned district judge rejected the appellant's version of the accident because he found that the appellant was not speaking the truth. On the evidence before him he was in my opinion entitled to do so.

Having reviewed the whole evidence in this case, I am of the opinion that the appellant should have been convicted under section 304A of the Penal Code. I would therefore allow the appeal to the extent that the conviction is altered to one under section 304A of the Penal Code. As regards sentence I am of the view that a fine of $1,000 or six months imprisonment would meet the ends of justice in this case. Accordingly the sentence of one year's imprisonment and the disqualification is set aside and a fine of $1,000 or six months imprisonment in lieu thereof is substituted.

There is one other matter. Counsel for the appellant criticised the manner in which the learned district judge conducted the trial of the appellant. His complaint was that, by reason of the frequency and nature of the interruptions by the learned trial judge when the appellant was giving evidence, the appellant did not have a fair trial. It was alleged that the trial judge intervened on no less than fifteen occasions; that he cross-examined the appellant; that he made it known that he was displeased with the appellant; and that he was so thoroughly annoyed with the appellant that he gave vent to his feelings by imposing a severe sentence.

I have examined the trial judge's notes of evidence and they show that he did intervene on several occasions. On page 24 appears the following:—

"Witness takes a long pause. He leans over rails. He does not show respect to court. He does not even stand properly. When court warns him he takes it as if it was very funny, court orders him to behave. He asks interpreter to repeat question. He repeatedly smiles and bandies words with interpreter. Court can understand what he says in Hokkien. Court warns him to behave himself. Court directs interpreter to repeat question."

And at page 28:—

"Witness deliberately evades answering question. Court warns him.

Court orders him to answer question."

It is possible that some of the judge's observations when he intervened may have indicated to the appellant that the judge was not favourably disposed towards him, but I can find no trace whatever of any tendency on the part of the judge to take the side of the prosecution. It is quite plain that he was asking the accused to be mindful of decorum and in pressing the accused to answer questions he was endeavouring to ascertain the truth. Nevertheless it is desirable that district judges and magistrates should bear in mind that the first and most important thing for the administration of the criminal law is that it should appear that the accused is having a fair trial and that he should not be left with any sense of injustice and certainly not on the ground that the trial judge was prejudiced against him. Where the prosecution and the defence are both represented by counsel, as they were in this case, the trial judge should refrain from intervening unless it is absolutely necessary.

Upon a full consideration of the case I have come to the conclusion that this is not a case where it can be said that the trial was completely irregular. I am unable to accept the argument that what took place would justify this court in ordering a retrial. As regards the sentence being severe, that should be the subject of an appeal as indeed it was in this case and has been dealt with.

Appeal allowed to the extent that the conviction was altered to one under section 304A of the Penal Code.

RE VALLIAPPA CHETTIAR, DECD.; RAMANATHAN CHETTIAR v. PALANIYAPPAN

[F.C. (Azmi L.P., Gill F.J. and Lee Han Hoe J.) May 26, 1969]

[Kuala Lumpur—Federal Court Civil Appeal No. X1 of 1968]

Executors and Administrators — Receiver — Application for appointment of — Application made ex parte — No evidence of interest in affidavit.

Practice and Procedure — Writ — Defendant permanently resident out of jurisdiction, but having local address — Whether writ to be issued out of jurisdiction — R.S.C. 1957, O. 3 r. 6 and O. 11.

In this case the respondent who claimed to be the adopted son of the widow of the deceased and one of the beneficiaries of the estate brought an action against the appellant, the executor of the will of the deceased. In the writ of summons the address of the appellant was given as 38, Leboh Ampang, Kuala Lumpur, al-